118 U. S. 512.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. ~~952~~. 593

THE MISSOURI PACIFIC RAILWAY COMPANY,
PLAINTIFF IN ERROR,

vs.

PETER HUMES.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

FILED SEPTEMBER 24, 1884.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 952.

THE MISSOURI PACIFIC RAILWAY COMPANY,
PLAINTIFF IN ERROR,

vs.

PETER HUMES.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MISSOURI.

INDEX.

	Original.	Print.
Writ of error	1	1
Return to writ of error	2	1
Citation	3	2
Proof of service of citation	4	2
Caption	5	2
Transcript from St. Louis court of appeals	6	2
Caption	6	2
Transcript from circuit court of St. Louis	6	2
Petition	6	2
Statement of summons and return	8	3
Answer	9	3
Reply	10	4
Judgment	10	4
Order overruling motion for new trial	12	4
Order allowing appeal	12	4
Bill of exceptions	12	5
Stipulation for judgment	36	11
Judgment	37	12
Opinion	38	12

JUDD & DETWEILER, PRINTERS, WASHINGTON.

	Original.	Print.
Order allowing appeal	39	12
Affidavit for appeal	40	13
Bond on appeal	41	13
Clerk's certificate	43	14
Cause submitted	44	14
Order referring cause to Commissioners	44	14
Judgment	44	14
Opinion	46	15
Bond	55	21
Clerk's certificate	57	22

1 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the honorable the judges of the supreme court of the State of Missouri, Greeting:

Because in the record and proceeds, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Missouri before you, at the April term, 1884, thereof, between Peter Humes, plaintiff, and The Missouri Pacific Railway Company, defendant, a manifest error hath happened, to the great damage of the said defendant, as by its complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., on the second Monday of October next, in the said Supreme Court of the United States to be then and there held; that the record and proceedings aforesaid being inspected, the said Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this fourteenth day of June, in the year of our Lord one thousand eight hundred and eighty-four.

Issued at office in the city of Jefferson with the seal of the circuit court of the United States for the western district of Missouri, dated as aforesaid.

H. C. GEISBERG,
Clerk Circuit Court United States, Western District of Missouri.

Allowed by—
WARWICK HOUGH,
Chief Justice Supreme Court of Missouri.

2 *Return to Writ.*

UNITED STATES OF AMERICA, }
State of Missouri, } *ss:*

In obedience to the command of the within writ I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within-entitled case together with all things concerning the same.

In witness whereof, I hereto subscribe my name and affix the seal of said supreme court, at the city of Jefferson, this 13th day of September, A. D. 1884.

[SEAL.] HENRY W. EWING, *Clerk.*
By E. B. EWING, *D. C.*

[Endorsed:] Returned and filed 18th day of June, 1884. Henry W. Ewing, clerk.

3 The United States of America to Peter Humes, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, D. C., on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Missouri, wherein The Missouri Pacific Railway Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Warwick Hough, chief justice of the supreme court of the State of Missouri, this fourteenth day of June, in the year of our Lord one thousand eight hundred and eighty-four.

WARWICK HOUGH,
Chief Justice of the Supreme Court of the State of Missouri.

4 UNITED STATES OF AMERICA, }
Western District of Missouri, } *ss:*

I hereby acknowledge due service of the within citation, this 23d day of June, A. D. 1884.

T. K. SKINKER,
Attorney for Defendant in Error.

5 STATE OF MISSOURI, *sct.:*

Be it remembered that heretofore, to wit, on the 1st day of April, 1882, there was filed in the office of the clerk of the supreme court of the State of Missouri a transcript, which is in the words and figures as follows, to wit:

6 STATE OF MISSOURI, *ss:*

Be it remembered that heretofore, to wit, on the fifth day of September, A. D., 1881, there was filed in the office of the clerk of the St. Louis court of appeals a transcript, in the words and figures following, to wit:

STATE OF MISSOURI, }
City of St. Louis, } *ss:*

Be it remembered that heretofore, to wit, on the 6th day of September, 1877, there was filed in the office of the clerk of the circuit court, city of St. Louis, a petition, which is in the words and figures as follows, to wit:

Petition.

CITY OF ST. LOUIS, *ss:*

In the Circuit Court. October Term, 1877.

PETER HUMES, Plaintiff,
vs.
THE MISSOURI PACIFIC RAILWAY COMPANY, Defendant.

The plaintiff states that the defendant is, and at the times herein-

after mentioned was, a corporation formed and existing under
7 the laws of the State of Missouri, and owning and controlling a railroad running into and through the city of St. Louis; that on the 1st day of August, 1877, plaintiff was the owner of a certain mule of the value of one hundred and thirty-five dollars; that on or about that day, at a point on the line of its said railroad in said city where the said railroad passes through, along, and adjoining enclosed and cultivated fields, defendant had not erected and did not maintain lawful fences on the sides of its said railroad with necessary farm crossings for the use of the proprietors of the lands adjoining said railroad, and had not erected and did not maintain gates in such fences, hung and provided with latches and hooks so as to be easily opened and shut, and had not constructed and did not maintain cattle-guards sufficient to prevent mules from getting on said railroad.

Plaintiff states that on or about the said 1st day of August,
8 and at and about the place aforesaid, the plaintiff's said mule was run over and killed by the defendant's agents, engines, and cars on said railroad; and that the killing of said mule was occasioned by the failure of the defendants to erect, construct, and maintain such fences, cattle-guards, and gates as aforesaid. Plaintiff states that, by reason of the premises, he is damaged in the sum of $135; wherefore he prays judgment for the sum of two hundred and seventy dollars and costs.

T. K. SKINKER,
Att'y for Plaintiff.

Statement of Sum's Returned.

Upon the filing of which petition a summons issued, which was returned by the sheriff of the city of St. Louis duly executed on the 7th day of September, 1877.

And afterwards, on the 3d day of October, 1877, an answer was filed in said cause, which is in words and figures as follows, to wit:

9 *Answer.*

In the Circuit Court of the City of St. Louis. October Term, 1877.

PETER HUMES, Plaintiff,
vs.
THE MISSOURI PACIFIC RAILWAY COMPANY, Defendant.

Now comes the defendant, by its attorney, and files this its answer to the plaintiff's petition in this case filed, and for answer thereto denies each and every material allegation in said petition contained. And for other and further answer and defense herein defendant says that such injuries or damages as were sustained by the plaintiff were caused by his own careless, negligent, and unlawful acts directly contributing thereto. And having fully answered, defendant asks to be hence discharged with its costs.

THOS. J. PORTIS,
Att'y for Def't.

And afterwards, on the 11th day of October, 1877, a reply
10 to said answer was filed in said cause, which is in words and figures following, to wit:

Reply.

PETER HUMES *vs.* THE MISSOURI PACIFIC R'W'Y CO.

For reply to the second defence in defendant's answer, plaintiff denies that the injuries and damages sustained by plaintiff were caused by his own careless, negligent, and unlawful act directly contributing thereto.

T. K. SKINKER,
Att'y for Pl'ff.

And afterwards, at a special term of said circuit court, being the February term, 1881, of said court, the following proceedings were had in said cause, to wit:

Judgment.

WEDNESDAY, *March* 23, 1881.

PETER HUMES
vs.
THE MISSOURI PACIFIC RAILWAY COMPANY. } 44156.

11 Now at this day comes said parties, by their respective attorneys, and this cause coming on for hearing, said parties waiving a jury, submit this cause to the court upon the evidence and proofs adduced; and the court, having heard the same and being fully advised thereof, finds the issues herein joined between the parties herein in favor of the plaintiff, and assesses his damages at the sum of one hundred and thirty-five dollars; and thereupon, on motion of plaintiff, by attorney, it is ordered by the court that said damages assessed aforesaid be doubled, and that judgment herein be rendered in favor of the plaintiff for the sum of two hundred and seventy dollars. Therefore it is considered by the court that the plaintiff recover of the defendant the sum of two hundred and seventy dollars, being double the amount of damages aforesaid as assessed, together with his costs and charges herein expended,
12 and have execution therefor.

Mo. in Arrest of Judg. Overruled.

Now at this day the motion this day filed herein for a new trial, being submitted to the court and duly considered, is overruled.

Bill of Ex., Aff., & Bond for Appeal Filed, and Appeal Allowed Def't.

"Now at this day comes the defendant, by attorney, and files herein its bill of exceptions, and on its motion it is ordered by the court that the defendant be allowed an appeal to the St. Louis court of appeals. Affidavit filed. Appeal bond filed and approved."

Which bill of exceptions, affidavit, and bond for appeal are in words and figures, respectively, as follows:

Bill of Exceptions.

In the Circuit Court for the City of St. Louis, at its February Term, 1881.

PETER HUMES *vs.* THE MISSOURI PACIFIC RAILWAY COMPANY.

Be it remembered that the above-entitled cause came on
13 for trial before the court (jury being waived by both parties) on the — day of March, 1881, at which the following proceedings were had, to wit:

The plaintiff, to sustain the issues on his part, was sworn as a witness and asked the following question:

Q. Please state to the court your name in full, and occupation.

To the answering of which question the defendant objected, and assigned the following reasons, to wit:

1st. Because the petition herein does not state facts sufficient to constitute a cause of action.

2nd. Because this court has no jurisdiction of this cause.

3rd. Because this is an action brought under section 43, Wagner's Statutes, vol. 1, page 310, as amended by the Laws of 1875, page 131, and the Laws of 1877, section 1, approved May 2nd, 1877; and that said act is in violation of and in conflict with—

14 1st. Sec. 1, Art. 14, of the Constitution of the United States, in that it is depriving the defendant of its property so far as it exceeds the value of the stock killed or injured without due process of law, and in that it denies to the defendant the equal protection of the laws.

2nd. Section 20, article 2, of the constitution of the State of Missouri, in that it is taking the private property of the defendant against its consent for the private use and benefit of this plaintiff, so far as the amount claimed by plaintiff exceeds the value of the stock killed or injured, and is so far taking and appropriating, without due process of law, the property of this defendant to the use of this defendant, which said use is private within the meaning of said provision.

3rd. Section 30, article 2, of the constitution of the State of Missouri, in that, so far as plaintiff seeks to recover in excess of
15 the value of the stock killed or injured, it is depriving the defendant of its property without due process of law, and against the law of the land.

4th. Section 4 of the constitution of the State of Missouri, in that it is granting to a class of persons, of which plaintiff is one, a special and exclusive right, privilege, and immunity.

5th. Section 7, article 11, of the constitution of the State of Missouri, in that it is giving the clear proceeds of the penalty, to wit, the amount over and above the value of the stock killed or injured, to this plaintiff, and not to the school fund, as is provided by said

section, and that the Legislature has provided no remedy, or party plaintiff, for the recovery of such penalty for said school fund; and because of the reasons aforesaid the said plaintiff is not entitled to any judgment in this cause, and especially not to a judgment for double the amount of his damage.

16 But the court overruled said objections, and directed the witness to answer the question; to which action and ruling of the court in overruling said objections the defendant then and there duly excepted.

The parties offered evidence which tended to prove the following state of facts:

The defendant is, and on the 1st day of August, 1877, was, a corporation formed and existing under the laws of the State of Missouri, and owning and controlling the railroad herein spoken of. On the same day plaintiff was the owner of a mule of the value of $135.00, which was struck and killed by a passing train on defendant's railroad. Plaintiff had a ten-acre field, marked on the accompanying plat "Hume's field," adjoining the railroad, and on the south side of it. There was no crossing over the railroad in front of, along, or adjoining this field. Access was had to the

17 field only through the bars as indicated on the plat. The field was enclosed with a substantial fence. East of plaintiff's field were enclosures of other parties, and east of them a road shown on the plat and known as Sublette avenue, runs from south to north up to the railroad. Immediately on the north side of the railroad, and running east and west parallel with the railroad, was the Manchester road, a public highway and thoroughfare. At the point where Sublette ave. comes to the railroad the fence on the south side of the track was down; has been down for five years. Sublette avenue is about 30 feet wide, and the gap in the fence is nearly as wide. On the north side of the railroad there is a corresponding opening, the fence and a gate, but the gate was not large enough to fill the opening by four or five feet. Originally it was long enough, but the opening was too narrow for the con-

18 venient passage of teams, and some of the teamsters removed several feet of the fence with one of the gate-posts, thus widening the opening and leaving the gate too short to fill the space. This happened a year or a year and a half before plaintiff's mule was killed. After that the gate always stood open.

Persons using Sublette ave. crossed the railroad through these openings. The company had long before laid down planks between the rails to cross on. Some half a dozen other families besides plaintiff habitually used this road and crossing. It was their only way of reaching the highway and getting to the city in a vehicle. There was no sign at this crossing, "Railroad crossing, look out for the cars," nor other sign of warning. Sublette avenue was not opened further south than plaintiff's lot, but if you were on foot or on horseback you might cross the creek there and go as far south as

19 the insane asylum—a mile or more. There were formerly cattle-guards at this crossing, and gates on both sides of the road, but the cattle-guards became old and unfit for use, and the

company did not think it necessary to keep them there. They were moved some five years ago, and have never been replaced. The fences and gates had also been suffered to go down. No notice was ever served on the section foreman of this part of the road by any county or city officer for the removal of the gates that formerly stood at this crossing. This section foreman had had charge of the road here for the fifteen years proceeding the trial. It was his duty to attend to the fences, gates, cattle-guards, &c., of the company here. Except, as before stated, the fences on both sides of the railroad were such as the law required. The lands on the south side of the railroad and adjoining it consisted of a succession of enclosed and cultivated fields for several miles in either direction, not, however abutting immediately upon the railroad, but separated from it by the Manchester turnpike. Humes' bars to the crossing is about 300 yards. Humes used his field for a pasture for his stock, and allowed one Schwencker also to pasture his stock on it. Schwencker lived on the north side of the Manchester road, 100 feet west of the crossing, as indicated on the plat. On the afternoon of the 1st day of August, 1877, Schwencker sent his son, a boy seventeen years of age, to bring his mules out of the pasture. He took another boy with him and posted him at the bars, armed with a stick, to prevent Humes' mules from coming out with his father's. He succeeded in keeping back all except the mule in controversy, which ran past him in spite of his efforts to drive him back. From the bars the whole herd were driven through Sublette avenue over the crossing into Schwencker's lot, which was an open lot without gates. Young Schwencker then put his father's mules in the stable; caught plaintiff's mule, made a loop of a long wagon whip, threw it around the mule's neck, and, mounting a horse, started to lead him back to the pasture. Just as he approached the opening at the crossing the mule became unmanageable, and, after pulling the boy almost to the ground, broke away and ran into the railroad enclosure through the opening. Turning west, he ran up the railroad track about 100 feet and met and was struck and killed by an east-bound passenger train of defendant's at the point shown on the plat.

(Here follows diagram, marked 22.)

There was no negligence or carelessness alleged or proved on the part of the defendant's employees in charge of the train by which the mule was killed. The evidence showed that the plaintiff and his family had resided near that crossing for a number of years, and that he knew all about the character and condition of the said crossing and its surroundings; that Schwenker's mules were in plaintiff's pasture by his consent, and that Schwenker and his son were permitted by plaintiff to take his father's mules in and out of said pasture at pleasure.

The evidence also showed that the public had actually used Sublette avenue as a road for about five years, although said avenue had never been by law formally declared to be a public road.

The foregoing was all the evidence.

Def't's Inst. Refused.

Therefore the defendant requested the court to declare the law to be that upon the pleadings and all the evidence the plaintiff
24 is not entitled to recover, and the finding will be for the defendant.

But the court refused to so declare the law; to which action and ruling of the court the defendant then and there duly excepted.

The court then found the issues for the plaintiff, and assessed his damages in the sum of one hundred and thirty-five dollars ($135.00).

Thereupon the plaintiff moved the court to render a judgment in his favor for double the amount of said finding, to wit, in the sum of two hundred and seventy dollars ($270.00); to which proposed action of the court in so rendering a judgment for double the amount of plaintiff- damage, the defendant objected as follows, to wit:

In the Circuit Court for the City of St. Louis. February Term, 1881.

PETER HUMES *vs.* MISSOURI PACIFIC RAILWAY COMPANY.

The defendant herein, by his attorney, objects to the ren-
25 dition of any judgment in this cause, and especially to the rendition of a judgment for double the amount of the finding of the court, for the following reasons:

First. Because the court has no jurisdiction of this cause.

Second. Because this is an action brought under section 43, Wagner's Statutes, vol. 1, page 310, as amended by the Laws of 1875, page 131, and the Laws of 1877, section 1, approved May 2d, 1877, and that said act is in violation of and in conflict with—

1st. Sec. 1, Art. 14, of the Constitution of the United States, in that it is depriving the defendant of its property, so far as it exceeds the value of the stock killed or injured, without due process of law, and in that it denies to the defendant the equal protection of the laws.

2nd. Section 20, article 2, of the constitution of the State of Missouri, in that it is taking the private property of this defend-
26 ant, against its consent, for the private use and benefit of this plaintiff, so far as the amount claimed by plaintiff exceeds the value of the stock killed or injured, and is so far taking and appropriating, without due process of law, the property of this defendant to the use of this defendant, which said use is private within the meaning of said provision.

3rd. Section 30, article 1, of the constitution of the State of Missouri, in that, so far as plaintiff seek- to recover in excess of the value of the stock killed or injured, it is depriving the defendant of its property without due process of law, and against the law of the land.

4th. Section 53, article 4, of the constitution of the State of Missouri, in that it is granting to a class of persons, of which plaintiff is one, a special and exclusive right, privilege, and immuity.

5th. Section 7, article 11, of the constitution of the State
27 of Missouri, in that it is giving the clear proceeds of the penalty, to wit, the amount over and above the value of the

stock killed or injured, to this plaintiff, and not to the school fund, as is provided by said action, and that the Legislature has provided no remedy or party plaintiff for the recovery of such penalty for said shool fund.

And because of the reasons aforesaid, the said plaintiff is not entitled to any judgment in this cause, and especially not to a judgment for double the amount of the said finding of the court; but the court overruled said objections, and rendered a judgment in favor of plaintiff for two hundred and seventy dollars ($270.00); to which action and ruling of the court the defendant then and there duly excepted; and thereafter, to wit, on the same day that the judgment was rendered in the above-entitled cause, the defendant filed
28 its motion for a new trial, in words and figures as follows, to wit:

Motion for a New Trial.

In the Circuit Court for the City of St. Louis, at its February Term, 1881.

PETER HUMES
vs.
THE MISSOURI PACIFIC RAILWAY COMPANY.

Now comes the defendant, by its attorney, and moves the court to set aside its finding and judgment herein, and grant it a new trial, for the following reasons, to wit:

1st. Because the petition herein does not state facts sufficient to constitute a cause of action.

2nd. Because the court erred in overruling defendant's objections to the introduction of any evidence in this cause.

3rd. Because the court erred in overruling the demurrer of the defendant at the close of the evidence in this cause.

4. Because the finding of the court should have been for the defendant.

29 5. Because the judgment of the court should have been for the defendant.

6. Because the finding and judgment of the court are without evidence to support them.

7. Because the statute under which this suit was brought and under which the judgment herein was rendered is unconstitutional, null, and void, in this, that it is in violation of and conflict with—

1st. Sec. 1, Art. 14, of the Constitution of the United States, in that it is depriving the defendant of its property so far as it exceeds the value of the stock killed or injured, without due process of law, and in that it denies to the defendant the equal protection of the laws.

2d. Section 2, article 2, of the constitution of the State of Missouri, in that it is taking the private property of this defendant, against its consent, for the private use and benefit of this plain-
30 tiff, so far as the amount claimed by plaintiff exceeds the value of the stock killed or injured, and it is so far taking and appropriating, without due process of law, the property of this

defendant to the use of this defendant, which said use is private, within the meaning of said provision.

3rd. Section 30, article 2, of the constitution of the State of Missouri, in that so far as plaintiff seeks to recover in excess of the value of the stock killed or injured it is depriving the defendant of its property without due process of law, and against the law of the land.

4th. Section 53, article 4, of the constitution of the State of Missouri, in that it is granting to a class of persons, of which plaintiff is one, a special and exclusive right, privilege, and immunity.

5th. Section 7, article 11, of the constitution of the State of Missouri, in that it is giving the clear proceeds of the penalty, to
31 wit, the amount over and above the value of the stock killed or injured, to this plaintiff, and not to the school fund, as is provided by said section, and that the Legislature has provided no remedy or party plaintiff for the recovery of such penalty for said school fund.

E. A. ANDREWS,
Att'y for the Defendant.

And thereafter, to wit, on the — day of ——, at the February term of said court, 1881, said motion for a new trial came on to be heard, and the court, being fully advised, overruled said motion; to which action and ruling of the court the defendants then and there duly excepted.

And be it further remembered, that on the same day of the rendition of the judgment herein, and after the filing of the said motion for a new trial, the defendant filed its motion in arrest of judgment, which said motion is in words and figures as follows, to wit:

32 *Motion in Arrest of Judgment.*

In the Circuit Court for the City of St. Louis, at its February Term, 1881.

PETER HUMES *vs.* THE MISSOURI PACIFIC RAILWAY COMPANY.

Now comes the defendant, by its attorney, and moves the court to arrest the judgment herein, and declare that the same be held for naught, for the following reasons, to wit:

1st. Because the petition herein does not state facts sufficient to constitute a cause of action.

2nd. Because the statute under which this suit was brought, and under which the judgment herein was rendered, is unconstitutional, null, and void, in this, that it is in violation of and in conflict with—

1st. Sec. 1, Art. 14, of the Constitution of the United States, in that it is depriving the defendant of its property, so as it exceeds the value of the stock killed or injured, without due process of
33 law, and in that it denies to the defendant the equal protection of the laws.

2nd. Section 20, article 2, of the constitution of the State of Missouri, in that it is taking the private property of this defendant against its consent for the private use and benefit of this plaintiff, so far as the amount claimed by plaintiff exceeds the value of the

stock killed or injured, and is so far taking and appropriating, without due process of law, the property of this defendant to the use of this defendant, which said use is private within the meaning of said provision.

3rd. Section 30, article 2, of the constitution of the State of Missouri, in that so far as plaintiff seeks to recover in excess of the value of the stock killed or injured it is depriving the defendant of its property without due process of law and against the law of the land.

4th. Section 53, article 4, of the constitution of the State
34 of Missouri, in that it is granting to a class of persons of which plaintiff is one a special and exclusive right, privilege, and immunity.

5th. Section 7, article 11, of the constitution of Missouri, in that it is giving the clear proceeds of the penalty, to wit, the amount over and above the value of the stock killed or injured, to this plaintiff, and not to the school fund, as is provided by said section, and that the Legislature has provided no remedy or party plaintiff for the recovery of such penalty for said schoool fund.

E. A. ANDREW,
Att'y for Defendant.

And thereafter, to wit, on the — day of ——, at the Febuary term of said court, 1881, the defendant's said motion in arrest of judgment came on to be heard, and the court, after being fully advised, overruled said motion; to which action and ruling of the court in overruling said motion the defendant then and there duly excepted.

35 And now the defendant prays the court that this its bill of exceptions may be signed, sealed, and made a part of the record in this cause, which is accordingly done.

JAMES J. LINDLEY, [SEAL.]
Judge Eighth Judicial Circuit.

36 And afterwards, at the Oct. term, A. D. 1881, of the St. Louis court of appeals, to wit, on the 15th day of Nov. 1881, the following stipulation for a *pro forma* affirmance of the judgment herein was filed in said cause, to wit:

Stipulation.

In the St. Louis Court of Appeals, at its October Term, 1881.

PETER HUMES, Resp.,
vs.
THE MISSOURI PACIFIC RAILWAY COMPANY, App.

It is hereby agreed by and between the parties hereto that the judgment of the circuit court herein may be affirmed *pro forma* without prejudice to either party, in any appellate court. Any error in such affirmance is hereby waived by both parties.

T. K. SKINKER,
Att'y for Respondent.
E. A. ANDREWS,
Att'y for Appellant.

37 And afterwards, at the same term of said court, the following judgment was rendered in said cause, to wit:

Judgment.

Appeal from the Circuit Court, City of St. Louis.

TUESDAY, *November* 22*nd*, 1881.

PETER HUMES, Resp't, *vs.* MO. PAC. RAILWAY CO., Ap'l't.

Now again come the parties aforesaid, by their respective attorneys, etc., etc.

Appeal from the Circuit Court, City of St. Louis.

TUESDAY, *Nov.* 22, 1881.

PETER HUMES, Respondent,
vs.
THE MISSOURI PACIFIC RAILWAY COMPANY, Appellant.

Now again come the parties aforesaid, by their respective attorneys, and in accordance with their stipulation heretofore filed in this cause, it is ordered and adjudged by the court that the
38 judgment rendered herein by the said circuit court, city of St. Louis, be in all things affirmed *pro forma*, and stand in full force and effect, and that the said respondent recover of the said appellant his costs and charges herein expended, and have execution therefor. Opinion filed.

Which opinion is in the words and figures following, to wit:

Opinion.

Appeal from the St. Louis Circuit Court.

PETER HUMES, Respondent,
vs.
MISSOURI PACIFIC RAILWAY COMPANY, Appellant.

The parties file here a stipulation in writing that the judgment should be affirmed *pro forma*.

This is accordingly done without examination as to the merits.

Judgment is affirmed. Judge Lewis is absent. Judge Thompson concurs.

R. A. BAKEWELL.

39 And afterwards, at the same term of said court, the following further proceedings were had in said cause, to wit:

Appeal to Supreme Court Granted.

TUESDAY, *Nov.* 29, 1881.

PETER HUMES, Resp't, *vs.* MO. PACIFIC RAILWAY CO., Ap'l't.

Now at this day comes the said appellant, by its attorneys, and files aff. for an appeal herein, and on its motion an appeal is granted to the supreme court of the State of Missouri from the judgment herein rendered. It thereupon files its appeal bond in the

final sum of six hundred dollars, with Web. M. Samuel and J. H. Larimore as sureties. Filed and approved.

Said affidavit and bond are respectively in the words and figures following, to wit:

40 *Affidavit and Appeal Bond.*

Affidavit for Appeal to Supreme Court. In the St. Louis Court of Appeals, State of Missouri.

PETER HUMES, Resp't, *vs.* MISSOURI PACIFIC RAILWAY CO., App'l't.

Affidavit for Missouri Pacific Railway Company, appellant.

E. A. Andrews, attorney and agent for appellant, states that the appeal in the above-entitled cause is not made for vexation or delay, but because this affiant believes that the said appellant is aggrieved by the judgment and decision of the above-name- court in said cause. E. A. ANDREWS.

Subscribed and sworn to before me, this 25th day of November, 1881. JOS. F. BAIER, *Clerk.*

41 Know all men by these presents that we, The Missouri Pacific Railway Company, as principal, and Web. M. Samuel and J. H. Larimore, as sureties, are held and finally bound unto Peter Humes in the sum of six hundred dollars, for the payment of which well and truly to be made we bind ourselves, our heirs, executors, administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated at St. Louis, this the twenty-fifth day of November, A. D. 1881.

The condition of the above obligation is such that, whereas the Missouri Pacific Railway Co. has appealed from the judgment rendered against it and in favor of the said Peter Humes in the St. Louis court of appeals for the sum of two hundred and seventy dollars and — cents, together with costs:

Now, if said appellant shall prosecute said appeal with due
42 diligence to a decision in the supreme court, and shall perform such judgment as shall be given by the supreme court, or such as the supreme court may direct the St. Louis court of appeals or circuit court to give, and if the judgment or any part thereof be affirmed, will comply with and perform the same so far as it may be affirmed, and pay all damages and costs which may be awarded against it by the supreme court, then this obligation to be void; otherwise to remain in full force and effect.

[SEAL.] MISSOURI PACIFIC RAILWAY CO.,
By R. S. HAYS, 1*st V.-President.*
WEB. M. SAMUEL. [SEAL.]
J. H. LARIMORE. [SEAL.]

Attest: ——— ———,
Ass't Secretary said Corporation,

O. K. T. K. SKINKER, *C. J.*

Approved in open court, this 29th day of November, A. D. 1881.
Attest: JOS. F. BAIER, *Cl'k.*

43 STATE OF MISSOURI, *ss:*

I, Joseph F. Baier, clerk of the St. Louis court of appeals, do hereby certify that the above and foregoing is a full, true, and complete transcript of the record and proceedings in the above-entitled cause as fully as the same remain of record and on file in my office.

In testimony whereof, I hereunto set my hand and affix the seal of said court at office in the city of St. Louis, this 23d day of December, A. D. 1881.

[SEAL.] JOS.F. BAIER, *Cl'k.*

44 *Proceedings in the Supreme Court of the State of Missouri.*

And afterwards, to wit, on the 22nd day of April, A. D. 1884, the following further proceedings were had in said cause, to wit:

PETER HUMES, Resp.,

vs.

MISSOURI PACIFIC RAILWAY COMPANY, App.

Come now the parties in the above causes by their respective attorneys, and submit the same to the court on briefs.

And afterwards, to wit, on the 5th day of May, A. D. 1884, the following further proceedings were had in said cause, to wit:

PETER HUMES, Resp.,

vs.

MISSOURI PACIFIC RAILWAY COMPANY, App.

Now at this day it is ordered that the above and foregoing causes be referred to the commissioners.

And afterwards, to wit, on the 2nd day of June, A. D. 1884, the following further proceedings were had in said cause, to wit:

PETER HUMES, Respondent,

vs.

MISSOURI PACIFIC RAILWAY COMPANY, Appellant.

Appeal from St. Louis Court of Appeals.

Now at this day come the parties aforesaid, by their respective attorneys, and the court here being now sufficiently advised of and concerning the premises, do consider and adjudge that the judgment aforesaid, in form aforesaid, by the said St. Louis court
45 of appeals rendered, be in all things affirmed and stand in full force and effect. And it is further considered and adjudged by the court that the said respondent recover against the said appellant his costs and charges herein expended, and have therefor execution. (Opinion filed.)

Which said opinion is in the words and figures as follows, to wit:

46 In the Supreme Court of Missouri. April Term, 1884.

PETER HUME, Respondent, *vs.* THE MO. PAC. R. R. Co., Appellant.

Appeal from St. Louis Court of Appeals.

PHILIPS, C.:

This is an action instituted in the circuit court of the city of St. Louis, under what is popularly known as the 43rd section of the general corporation law of this State, for double damage for killing plaintiff's mule on defendant's railroad. The plaintiff recovered judgment for $135 which, on motion of plaintiff, was doubled by the court, and judgment entered accordingly. From this judgment the defendant appealed to the court of appeals, where the judgment of the lower court was affirmed *pro forma*. Defendant has brought the case here on appeal.

1.

This court is invited by appellant, in a most elaborate and creditable argument, to again consider and determine the constitutionality of said 43rd section. The constitutionality of this section of the statute was fully considered and affirmed in the case of Barret *vs.* R. R., 68 Mo., 58, which was followed in Cummings *vs.* R. R. Co., 70 Mo., 570. But counsel urge these decisions were under the constitution of 1865 quite unlike certain provisions of the constitution of 1875. The validity of this section under the constitution of 1875 was considered by Judge Hough, in the opinion delivered by him in Barret *vs.* R. R., in so far at least as the validity of the law was involved, in giving the penalty over and above the actual value of the animal to the owner thereof instead of to the school fund, as appellant now insists should be done. So the validity of this section was directly presented under the constitution of 1875 in the case of Spealman *vs.* R. R., 71 Mo., 434. The opinion in this last case was written

47 by Norton, J., who was an active and prominent member of that convention. The question presented therein for determination were the effect upon this statute of Article 5 of the Amendments to the Constitution of the United States, which declares that "No person shall be deprived of life, liberty, or property without due process of law;" also of Article 14 of the Federal Constitution, which provides that "No State shall deprive any person of life, liberty, or property without due process of law;" and also of article 11, section 8, of the constitution of 1875 of Missouri, which provided *inter alia* that "the clear proceeds of all penalties and forfeitures, &c., shall belong to and be securely invested and sacredly preserved in the several counties as a county public school fund." To his opinion, from his high vantage ground, I should hesitate to oppose any antagonistic view of my own touching the points decided. By these adjudications I feel bound. No view entertained by me, if dissentient, could avail the appellant. I shall, therefore, discuss only such questions raised by the appeal as are not within the matters so adjudicated by this court.

2.

It is now urged that the double liability clause of section 43 is repugnant to section 20 of article 2 of the constitution of 1875, which declares: "That no private property can be taken for private use, with or without compensation, unless by the consent of the owner." This provision, in so many words, was not in the constitution of 1865. It is contended that so much of the damages allowed the owner of property injured by a railroad as exceeds its actual value is in effect taken from the company without compensation to it and against its assent. The logic of this argument, literally taken, would exempt the company offending from single damages, for it receives no compensation at all where it merely destroys the property of the citizen, and gives, presumably, only an enforced assent to making restitution in single damages. It would apply with equal force looking alone to the literal language of the constitution to any taking of property in satisfaction of any claim for damages. As the right to take to it is made to depend on the consent of the party the result would follow that the injured party could not recover any damage from the wrong-doer. We do not think this
48 provision of the constitution was aimed at section 43, or its cognates to be found in the statute. We can conceive of a more rational purpose in its adoption, predicated by the history of adjudications by the courts of this State, as well as the current history of the times, developing so many devices and schemes by individuals, legislatures, and municipalities to obtain private property against the owner's consent for purely private purposes. It was, for instance, early decided by this court, in Cooper *vs.* Maupin, 6 Mo., 624, that a right of way from necessity from one part of claimant's land to another part of the same tract over the land of another could not exist. While in Snyder *vs.* Warford *et al.*, 11 Mo., 513, it was held that a right of way of necessity exists in all cases in which an individual owns land surrounded by other lands, excluding him from any public highway, and that the Legislature might provide by enactment a mode for securing such right to the individual land-owner. And in Dickey *vs.* Tennison, 27 Mo. 373, the court held that the Legislature could not, under the semblance of nominating it "An act to establish a neighborhood road in the county," evade the rule of justice that prevented the taking of private property for private use. In the course of his opinion Judge Scott held that the constitutional recognition of the right of eminent domain for the public use gave no implication for the taking of private property for private use. So the first part of said section 20 of the constitution, in illustration of what Webster said, that "written constitutions sanctify and confirm great principles," declared that "no private property can be taken for private use, with or without compensation, unless by the consent of the owner." But, as if recalling the adjudications of this State and the great hardships under the common law limitations under some circumstances, immediately followed up the opening generality of the section

with the following: "Except for private ways of necessity, and except for drains and ditches across the lands of others for agricultural and sanitary purposes, in such manner as may be prescribed by law." It was always the common law
49 of the land that private property could not be taken for private use against the owner's consent. It springs from the inviolability of individual right, the encouragement to the acquisition of property by the citizen, the aim and office of every just government. So that the first part of this section of the constitution but emphasized an ancient right and universal principle, while the succeeding portion, so far from extending the operation of the rule to any new objects, enlarged the occasions for the invasion of private property for private use by permitting it, under circumstances of doubtful, if not denied, right at common law. It is among the canons for the interpretation of laws that the intention of the lawmaker is often to be deduced from a view of the whole and every part of the instrument or act taken and compared together. "The real intention when accurately ascertained will always prevail over the literal sense of the terms." It is true that a thing which is within the mind and intention of the framers of the law, is as much within the statute as if it were within its letter, "and a thing which is within the letter of the statute, is not within the statute unless it be within the intention of the makers." (The People *vs.* Utica Ins. Co., 15 John. R., 380–1.) So may the letter of the statute be enlarged or restrained according to the true intent of the framers of the law. (Whitney *vs.* Whitney, 14 Mass., 92–3; Riddick *vs.* Governor, 1 Mo., 147; State *vs.* Emerson, 39 Mo., 80; State *vs.* King, 44 Mo., 283; Riddick *vs.* Walsh, 15 Mo., 519.) This intention is to be taken or presumed according to what is consonant to reason and good discretion, and so as neither to embarrass the soveriegn power of the State, nor lead to consequences unreasonable and revolutionary. (Neenan *vs.* Smith, 50 Mo., 525; State *vs.* Pitts, 51 Mo., 133; Conner *vs.* R. R. Co., 59 Mo., 285.) It is a well known fact to the eminent lawyers and others composing the convention of 1875, that upon the statute books of this State were a large number of laws evincing the settled policy of the law-making power to give to persons injured
50 damages in excess of the actual loss sustained, whenever and wherever it seemed necessary in the legislative mind to so do in the execution of the laws for the preservation of the public good, and the better regulation of the police power. Among these are the following, furnished by the diligent counsel for plaintiff:

1. Acts which give the party injured treble damages:

For willful injury to the property of a railroad company, R. S., § 808; G. S., 1865, 342, § 41; railroad exacting illegal freight charges, §§ 835, 844; Acts 1875, p. 114, § 5; p. 118, § 14; waste by tenant for life or years, § 3107; G. S., 743, § 42; any wanton waste by tenant, § 3114; G. S., 743, § 49; certain neglects of duty by clerks of courts, § 2109; Acts 1874, p. 26, § 17; intentional trespass on real estate, § 3921; G. S., 371, § 1.

2. Acts which give the party injured double damages:

For malicious trespass on personal property, § 3928; G. S., 380, § 8; willful waste by administrator, § 286; G. S., 513, § 5; evading payment of tolls on turnpike road, § 867; Acts 1868, p. 160, § 2; certain neglects of duty by recorders, § 3823; G. S., 161, § 18; same by justices of the peace, § 2847; G. S., 699, § 14; same by clerks of courts, § 2773; Acts 1868, p. 59, § 6; killing or injuring live stock trespassing where there is no fence, § 5655; G. S., p. 385, § 6; damage to live stock caused by unfenced saltpetre works, § 5668; G. S., 385, § 9; certain acts of master of a steamboat, § 4283; G. S., 760, § 59; sheriff failing to settle with his county, § 5402; G. S., 231, § 43; drover driving off another's live stock, § 5469; Acts 1868, p. 80, § 1; failure of finder of lost property to make public discovery of it, § 6276; G. S., 375, § 6; unlawfully selling estray, § 7359; G. S., 390, § 29.

3. Acts which give other measures of recovery:

For steamboat taking cordwood without owner's consent, treble damages and $20, § 4269; G. S., 758, § 45; certain trespasses on real estate, double damages and $5, § 3922; G. S., 379, § 2; willful injury to property of a turnpike company, double damages and $10, § 870; G. S., 347, § 19; unlawfully disclosing contents of a telegram, all special damages and $50, § 887; G. S., 350, § 13; unlawfully refusing to enter satisfaction of a mortgage, all damages sustained and ten per cent. of the mortgage debt, §§ 3312, 3316; G. S., 619, § 15; 620, § 19; failure of constable to execute process, all damages sustained and $10, § 2864; G. S., 702, § 24; failure of officer serving execution to account for proceeds, the full amount of proceeds, with interest and damages at 5 per cent. per month, § 2403; G. S., 648, § 65; neglect of tobacco inspector to perform his duties, all damages sustained and $50, § 5857; Acts 1871, p. 82, § 5; affixing false label or trade-mark to merchandise, the damages sustained and $500 § 7547; Acts 1870, p. 74, § 4; overcharge on freight by railroad company or any employé, any sum not exceeding $1,000, including an attorney's fee, § 822; Acts 1872, p. 70, § 4; failure of railroad company to deliver consignments at elevator as ordered by consignor, or at junction or crossing of another road, full value of consignment and $25, §§ 813, 817; Acts 1872, p. 75, §§ 4, 6.

51 Some of these statutes are old and historic. They are interwoven with the legislative policy of the State. They are grounded in the wisdom of experience. Their long continuance justifies the presumption that the people and their law makers have found them preservative of the public welfare, and a shield of just protection to private property. Why, therefore, may I ask, in respect of the constitutional provision under consideration, and others invoked in this appeal, should the framers of the constitution of 1875, representing as they did the sovereignty of the whole people, intend by the general language employed to sweep away all these sanctioned legislative provisions? Was there any complaint from the constituency to justify it? Any popular demand for it? Any recognized abuse or evil in their application? Is it not reasonable to assume that had it been in the mind of the framers of the constitution to strike so deep and broad into the body of the legislative branch of

the State government, that they would have done so by the employment of words so direct and pertinent as to have made the purpose unmistakable? Other provisions of the organic act designed to effect radical changes and eliminate existing laws from the statutes give clear answer to these questions.

3.

It is likewise contended that said section 43 is in conflict with § 53 of article 4 of the constitution of 1875. This provision is as follows: "The General Assembly shall not pass any local or special law granting to any corporation, association, or individual any special or exclusive right, privilege, or immunity, or to any corporation, association, or individual the right to lay down a railroad track." It is argued that section 43 is special; that it "is partial and discriminates as between individuals and corporations." Is it just and correct to charge that this statute grants to any "individual any special or exclusive right, privilege, or immunity"? If it named any individual or preferred any particular number of citizens, and declared that they and no others might maintain the given action, it would be obnoxious to the criticism. But this right of action is given to all the people who may be thus injured. It is
52 given as well to any association of people and to railroad corporations whose stock may be injured by any railroad. Nor is it just or accurate to say of this statute that "it prescribes a severer punishment against a railroad corporation owner of a railroad, than an individual owner or partnership owner." As early as 1872 (laws of 1872, p. 69, sec. 2) it was enacted by the Legislature that "the term railroad corporation contained in this act shall be deemed and taken to mean all corporations, companies, or individuals now owning or operating, or which may hereafter own or operate, any railroad in this State." This was the law when the appellant obtained its charter of incorporation under the general law of the State, and it is the law of the State to-day. (Sec. 825, R. S. 1879.) It is further alleged against this statute that it is partial and special because it "is directed against railroads alone, while no other common carriers are brought within its operation." Had the Legislature deemed it essential to the protection of human life and private property, they would doubtless have extended the statute to carriers by coach and water; but as the class of property and human life protected by this provision of the statute is not exposed to a like peril incident to coach and water travel, the occasion and necessity for so extending the statute does not exist. Class legislation is not necessarily obnoxious to the Constitution. It is a settled construction of similar constitutional provisions that a legislative act which applies to and embraces all persons "who are or who may come into like situations and circumstances" is not partial. (Mayor *vs.* Dearmon, 2 Snead, 104; Davis *vs.* State, 3 Lea, 379; Snyder *vs.* Warford *et al.*, 11 Mo., 517.) As suggested by Cooper, J., in Davis *vs.* State, *supra*, if the construction contended for by the learned counsel should obtain, laws giving mechanics' liens would be interdicted. And we might add so would the act giving liens to contractors, laborers, &c.,

against railroads, liens of agisters and keepers of horses, inn and boarding-house keepers, as also landlord's liens. This character of legislation, as already shown, has long prevailed in this State.

53 The courts have repeatedly recognized and sanctioned their validity until now it would be disruptive to outlaw them. This of course should not deter the courts from their duty in pronouncing the judgment demanded by a strict and rigid enforcement of the mandate of the constitution, lead where it might. But when the judiciary is confronted with the question of the constitutionality of a solemn act of the legislative branch of the Government, while not shrinking from the responsibility, it should approach its consideration with a cautious deliberation. The errors and oppressions of a legislative body are more readily corrected. The people are more potential through the ballot-box to reach immediately the evil. The Legislature lives for only two years. The process of rectifying the mischief of a misconstruction by the judiciary of the fundamental law is necessarily slow. Therefore and wisely the courts before pronouncing a statute void demand to be satisfied beyond a reasonable doubt of its vice. So this court has announced: "Both upon principle and authority, the acts of the Legislature are to be presumed constitutional until the contrary is clearly shown, and it is only when they manifestly infringe on some provision of the constitution that they can be declared void for that reason. In case of doubt every possible presumption not directly and clearly inconsistent with the language and subject-matter is to be made in favor of the constitutionality of the act." (State *ex rel. vs.* R. R., 48 Mo., 468; The State *vs.* Able, 65 Mo., 357.) Much of the vigorous argument in this case is directed against the wisdom and policy of the law in question. Some of the strictures upon the abuses it begets in practice may be just. But, as was aptly said by Cooper, J., in Davis *vs.* State, *supra*: "Whether a statute is contrary to the genius of a free people is a question for the Legislature, not the judge. It cannot be annulled upon supposed equity, the inherent rights of freemen, or any general and vague interpretation of a provision of the constitution beyond its plain and obvious import."

54 It is urged by counsel for respondent that the appellant, having accepted its incorporation under the general corporation law of the State, including the 43rd section, it is estopped from denying its validity. If the provision can be regarded as a condition proposed by the State in granting the franchise, that the incorporator should pay such damage to whoever might be so injured, and defendant accepted its charter thereunder, there is apparent force in the suggestion. But it is not necessary here to determine this question.

Counsel for the appellant have argued very extensively many imputed errors of the trial court pertaining to the sufficiency of the petition and refusal to sustain demurrer to the evidence. These questions are not before us. The amount of the judgment "in dispute" being less than two thousand five hundred dollars, the defendant brings the case here only on the ground that it involves "the construction of the Constitution of the United States or of this

State." (Section 12, art. 6, State constitution.) These constitutional questions we have considered. That exhausts our jurisdiction on this appeal. It follows that the judgment of the court of appeals should be affirmed. All concur.

JNO. F. PHILIPS.

Adopted as the opinion of the court, and judgment will be entered accordingly.

Hough, C. J., absent. JNO. W. HENRY.

And afterwards, to wit, on the 20th day of June, A. D. 1884, a bond for appeal was filed in said cause, which is in the words and figures as follows, to wit:

55 Know all men by these presents, that we, The Missouri Pacific Railway Company as principal, and William Nichols and Erastus Wells as sureties, are held and firmly bound unto Peter Humes in the full and just sum of one thousand dollars, to be paid to the said Peter Humes, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals and dated this —— day of ———, in the year of our Lord one thousand eight hundred and ——.

Whereas lately at the April term, A. D. 1884, of the supreme court of the State of Missouri, in a suit depending in said court between Peter Humes, plaintiff, and The Missouri Pacific Railway Company, defendant, judgment was rendered against the said defendant, and the said defendant having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Peter Humes, citing and admonishing him to be and appear at a Supreme Court of the United States, to be held at Washington, D. C., on the second Monday of October next:

Now the condition of the above obligation is such that if the said Missouri Pacific Railway Company shall prosecute said writ to effect and answer all damages and costs, if it fail to make good its plea, then the above obligation to be void; else to remain in full force and virtue.

THE MISSOURI PACIFIC R'Y CO.,
By D. S. H. SMITH, *5th V.-Pres.* [SEAL.]
W. NICHOLS. [SEAL.]
ERASTUS WELLS. [SEAL.]

Attest: D. S. H. SMITH, *Ass't Sec'ty.*

Sealed and delivered in the presence of—
[SEAL.] ——— ———.

Approved by—
WARWICK HOUGH, *Judge.*

56 UNITED STATES OF AMERICA, } *sct:*
Eastern District of Missouri, }

Before me, James Holland, a United States commissioner, personally appeared W. Nichols, to me well known, who upon oath states

that he is worth over and above all his indebtedness the sum of one thousand dollars, and that he own- real property to that amount, subject to execution in the State of Missouri.

W. NICHOLS.

Subscribed and sworn to before me, this 19th day of June, 1884.

[SEAL.] JAMES HOLLAND,
U. S. Commissioner.

UNITED STATES OF AMERICA, } *sct:*
Eastern District of Missouri, }

Before me, James Holland, a United States commissioner, personally appeared Erastus Wells, to me well known, who upon oath states that he is worth over and above all his indebtedness the sum of one thousand dollars, and that he owns real property to that amount, subject to execution in the State of Missouri.

ERASTUS WELLS.

Subscribed and sworn to before me, this 19th day of June, 1884.

[SEAL.] JAMES HOLLAND,
U. S. Commissioner.

UNITED STATES OF AMERICA, } *sct:*
Eastern District of Missouri, }

I do hereby certify that the parties subscribing the within bond are respecttively over the age of twenty-one years, and are competent to contract, and that their signatures to said bond are genuine. I further certify that said bond is good and sufficient.

Witness my hand and seal, this 19th day of June, 1884.

[SEAL.] JAMES HOLLAND,
U. S. Commissioner.

57 STATE OF MISSOURI, *ss:*

I, Henry W. Ewing, clerk of the supreme court of the State of Missouri, do hereby certify that the above and foregoing is a full, true, and complete transcript of the record and proceedings in the above-entitled cause, as fully as the same remain of record and on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at office in the city of Jefferson, this 10th day of September, A. D. 1884.

[SEAL.] HENRY W. EWING, *Clerk,*
By E. B. EWING, *D. C.*

Endorsed on cover: Missouri supreme court. No. 952. The Missouri Pacific Railway Company, plaintiff in error, *vs.* Peter Humes. Filed 24th September, 1884.